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Perez v. Betancourt Appellant's Brief Dckt. 38617

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Pro-se/Indigent/Idaho code 31-3220
Aniceto Betancourt IVth
P.O. Box 6385 Boise, Idaho 83702
(208) 908-7884

IN THE SUPREME COURT FOR THE STATE OF IDAHO

DIANA BARROSO PEREZ,

Case No. CV-DV-2010-4623

Petitioner/Respondant,

BRIEF TO SUPPORT APPEAL

vs.

ANICETO BETANCOURT IVth,

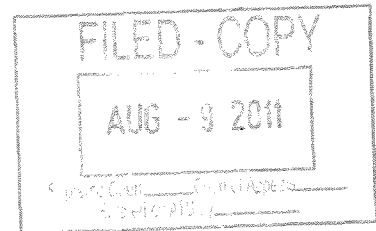
Respondant/Appellant.

TO: THE ABOVE NAMED RESPONDENT, DIANA BARROSO PEREZ, AND THE
PARTY'S ATTORNEY, RODERICK GERE, AND THE CLERK OF THE ABOVE-
ENTITLED COURT.

COMES NOW APPELLANT AND SUBMITTS BRIEF TO SUPPORT APPEAL;

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I. SUMMARY

The record shows that this case was filed by Diana Barroso on 3/11/2010. On 3/12/2010 an Illegal Ex Parte hearing was held, and 12 day temp. order was issued, and the case was illegally passed back and forth between Judge Mc Daniel and Judge Reardon, however Judge Day scheduled a hearing for March 24th, 2010 at 9:00 AM. On 3/15/2010 Aniceto Betancourt went into the court house to submit motions and subpoenas. Aniceto Betancourt submitted a Motion to dismiss, that the court failed to rule on until 5/26/2010, which is not a timely ruling. On the

same day the Clerks refused to allow Betancourt to file a motion for Discovery, or Subpoenas, or motions to compel; Betancourt was told that he was not allowed. On March 24, 2010 a Hearing was held and Judge Day, Betancourt plead Not Guilty to the allegations. After the hearing Judge Day granted the Petitioner a protective order against Betancourt. Betancourt Appealed 4/30/11, and Judge Sticklen was assigned the case. Throughout these proceedings Barroso has still been attempting to contact Betancourt to present day. Aniceto Betancourt submitted Briefs and memorandums in support of the Appeal, and requested a hearing 8/11/2010. A hearing was held on 1/26/2011 and Judge Sticklen upheld the district court ruling. Betancourt Appealed to the Idaho Court of Appeals who sent it to the Supreme Court of Idaho.

II. ISSUES/ARGUMENT:

In the original Proceeding there was no Discovery Process, Judge Day did not respond to any of my motions and the clerks refused to let me file for Discovery or Subpoenas. The other party had a responsibility to provide Discovery, and I have a right to Discovery. Judge Sticklen ignored this issue on Appeal and did not even address it even though it was clearly raised more than once. My right to subpoena, confront accusers, equal protection rights, child custody rights, right to confront adverse witnesses, impartial triar of fact, illegal interrogation, double jeopardy, right to counsel during interrogation, right against self incrimination, right to know the accusations, compulsory process, overbreadth accusations, right to subpoena, right to compel witnesses. I was denied access to the court, freedom of speech, freedom of religion, right to be heard. I was also subjected to cruel unusual punishment, malicious harassment, and physical and mental abuse, not allowed to use my inhalers at the hearing, fundamental due process and

fairness, demoralization by Judge Day, and retaliation issues were ignored by Judge sticklen, but I raised all of the above issues in both proceedings. Judge Day in the original proceeding refused to allow me to submit Allibi evidence and documentation. I had records from school where I log in and out, and an electronic office log that proved the dates and times of her allegations were false. I also had e mail records that exonerate me and judge Day wouldn't let me look at them. He refused to allow me submit evidence or ask questions on the same issues he allowed the other party to. He ruled that history of violence was admissible, but when I submitted evidence and testimony, or asked questions on those same issues he ruled against it exhibiting a double standard and lack of objectivity. Several subpoenas, motions, and documents I filed were ignored and disregarded by Judge Day and this is supported by record. Judge Stricklen misrepresents the issues raised by Aniceto Betancourt on Appeal on page 11 of her memorandum decision and order. Both Judge Day and Judge Sticklen Discriminate against Aniceto Betancourt because of his Disabilities and Gender.

4. It was ordered in the original Proceeding that the record be sealed form public view by Judge Day, however Roderick Gere and Diana Barroso have both publicly disseminated information related to this case.

5. Diana Barroso is still trying to contact me to this day. The court record shows that I filed a motion to dismiss the protective order and the court did not respond in a timely manner which is a first amendment violation.

6. The restraining order should have only lasted a year, as shown by the record but is still in effect illegally and the lower courts have ignored this issue.

7. Diana Barroso is attempting to contact Aniceto Betancourt IV and is sending him E mails requesting a response which violates the Protective order issued by Judge Day; page 4 of the original protection order prohibits under Idaho code 8-204 and 18-304 this type of solicitation. This is proven by my Internet E mail records of which I have provided a copy to the court. Even though I refuse to have contact with her she is still pursuing me and stalking me. This is not the first instance of her doing this: she also tried to come to my house in Boise, and I was thus forced to move to Meridian after I filed a police Report. She has also attempted to show up to one of my classes to try to provoke a contact, which has prevented me from attending class. These incidents prove that this entire case by her is an act of retaliation: Gomez v Vernon, 255 f-3d 1118,1127 (9th cir. 2001) citing Hines v Gomez, 108 F-3d 265 (9th cir. 1997).

At the original Hearing the WCA was allowed to word for word give testimony on behalf of Diana Barroso and her witnesses and tell them what to say through out court; they did not file a notice of appearance, and they did not disclose whether or not they were attorneys or what their credentials were. They were not sworn. I received no disclosure of information regarding their relationship or connection to this case.

☐ Legal Aid refers clients to the WCA; the WCA refers clients back to Legal Aid and back and forth. This combined with Betancourt's history with Legal Aid as an Employee, and the fact that Roderick Gere's recent submission of Margeret Vegas Affidavit admits contact between Legal Aid shows conflict of interest. Roderick Gere did not file Notice of Appearance until end of this case but became involved in this case at the beginning stage.

☐ No Discovery Process violates 5th and 14th Amendments of the U.S. Constitution; There was No Discovery Process in this case; Other party gave No Notice or Disclosure of Exhibits, Other Party gave No Notice or Disclosure of Witnesses, and they purposefully withheld Exculpatory Evidence: I was given no opportunity to conduct depositions, or make any Discovery Requests. This interfered with my right to present an Alibi(s), affirmative defenses, expert witnesses, or Exculpatory Evidence. One example of this is that I had a right to know who the alleged third party, or so called "Liberty Elementary employees" on whose behalf Diana and her WCA representative and were making allegations for, who, I might add, did not attend the hearing, or testify.

☐ Right to Confront Accusers; Right to confront adverse witnesses: 5th and 6th Amendments of U.S. Constitution; Right to confront my accuser and adverse witnesses was violated because I was not given any Notice of Witnesses or Evidence, and there was no Discovery process: also, Judge Day interrupted me several times and interrupted my questions and used tactics to demoralize me and to interfere with the Examination and the Cross Examination of the witnesses. This also robbed me of my right to research, address, or present any issues regarding the character and conduct of witnesses, prior inconsistent statements, and or credibility of witnesses. He allowed Diana Barroso to enter evidence and testimony and question witnesses on the same issues that he disallowed me thereof.

☐ Right to Impartial and Objective Trier of fact; 6th Amendment U.S. Constitution: Judge Day showed extreme Bias Prejudice towards me and maliciously harassed me in violation of Idaho code 18-7901 and 67-2915 through 67-2918. There was not a level playing field and no fairness. He allowed Diana Barroso to enter evidence that was hearsay, irrelevant and that

violated other rules of evidence, and rules of court and civil procedure, but then turned around and stopped me from presenting evidence on the same issues. He yelled at me, told me to shut up and be quiet. He tried to discourage me from cross examination on record. He stared at me and glared at me menacingly and angrily throughout the entire hearing and continually interrupted me and tried to demoralize me. He made statements more than once refusing all my documents with out even knowing what they were. He allowed her witnesses to give testimony in front of each other illegally while some unknown person who I later found out was a representative of the WCA, who was coaching Diana Barroso and her other witnesses while at the desk and on the stand. He Discriminated against me because of my Gender, and has a long history of Gender Discrimination in all of his other cases as well. All of his rulings and statements were against me; I was not able to argue my case, or even speak effectively because of fear of retaliation of Judge Day. He insinuated and implied that he would hold me in contempt if I gave him a reason.

□ Illegal Interrogation; Right Against Self-Incrimination; Freedom from Double Jeopardy: Right to Counsel; 5th and 6th Amendments of U.S. Constitution: Judge Day Illegally Interrogated me regarding Canyon County Case CR2006-8064 for a 2006 Homicide case in which I am Innocent and was Acquitted in 2007. Not only is and was this information irrelevant to the point at issue and case but it was also irrelevant in time should have been inadmissible. I had already told the Judge and had turned in paperwork to the court regarding my Mental and Physical Disabilities so I think he was trying to provoke a mental or physical reaction to cause me to shut down either mentally or physically by making me re-live the Trauma; I also suffer from and have been Diagnosed with Post Traumatic Stress Disorder, Anxiety Disorder, Depression, Severe Chronic Asthma, Reactive Airway Disease, Trauma Dyslexia, Hydrocephalus (water in the Brain) back injury, pankratitus, and Pleurisy. I was already acquitted in the Homicide case where

a man tried to kill me, and Judge Day used this to support and grant the restraining/protective order, and attempted to re-try the 2006/07 case in this case, against me, thus constituting Double Jeopardy, and henceforth attaches double jeopardy to this case: as soon as Judge Day asked me one question in regard to the homicide case, double jeopardy coupled and attached to this case, and I immediately had a right to counsel, and Judge Day knew this fully well, which also shows that Judge Day's actions don't just equivocate abuse of discretion, but also express and implied malice, disdain, prejudice, grudge, and Bias toward and against Aniceto Betancourt IV. He stated that he was afraid of me and accused me of being violent in the courtroom on the day of the hearing but I committed no overt nor covert acts of aggression whatsoever and he cannot even list one thing I did wrong in the courtroom, therefore he is obviously lying and this also proves Bias Prejudice on his part. He should have done the prudent thing and had another Judge handle the case.

☐ Right to Know the Accusations against me; Right to know what I was accused of, compulsory process rights, Right to Subpoena, Right to Compel witnesses; 6th Amendment U.S. Constitution: I attempted to submit subpoenas and motions to compel witnesses, but the Ada County Clerks refused and the Court Assistance Office also confirmed their decision; they told me I could not file Subpoenas or request Discovery; they said I had to wait and see what the Judge said at the Hearing. Judge Day stated on Record that he would not consider any of my documentation even at the offset of the hearing. The Protection order and its allegations were vague and over breadth and with no clear information set forth: there was nothing but vague and ambiguous allegations and accusations. There was no specific acts alleged and the dates and times were so vague that it robbed Betancourt of his right to provide Alibi evidence and affirmative defenses.

Denial of Access to Court; Violation of Pro-Se Rights and Pleadings Freedom of Speech, Freedom of Religion, Right to be Heard: 1st Amendment U.S. Constitution and 6th Amendment U.S. Constitution : Betancourt asked Judge Day to Recuse and remove Himself during the hearing based on prejudice and Bias and Judge Day refused to respond. Judge Day refused to respond to any of my Motions and filings. The Ada Clerks refused several of my filings and documents. Judge Day interrupted me and told me not to speak on more than one instance and intentionally attacked my mental train of thought. He refused to allow me to present evidence, or submit my exhibits. He ignored the fact that I am Pro-se, Indigent, and Disabled and held me to the scrutiny of an attorney. I was also forced to swear in under oath in violation of my Christian religious beliefs. I was denied my right to file documents in this case before, during, and after the case was over. Also, my Daughter was not given a chance to be heard; she has a right to be raised by both parents and she is referred to in the protection order and at Trial. Children have been allowed to testify via cctv Closed Circuit Television, or under seal in Judges Chambers in several cases in the past. My Daughter has a right to be heard and access the court. All of these instances constitute injury pursuant Lewis V. Casey, 518 US 343 116 S. CT. 2174 (1996). And ID, 518 US at 351, 116 S Ct at 21880. This claim is also supported by Nordgren v. Milliken, 762 F. 2d 851, 855 (10th cir) cert. Denied 474 US 1032 (1985) haines v Kerner 404 US 520 (1971) pro-se pleadings should be held to less stringent standards than those drafted by attorneys;; Elmore v McCommon (1926) 640 F. Supp-905. "The right to file a lawsuit prose is one of the most important rights under the constitution and laws." Jenkins v Mckeithan 95 US 411 421 (1959) Picking v. Pennsylvania R. Co. 151 Fed 2nd 24 Pucket V. Cox, 456 2nd 233 also point out that pro-se pleadings are not only to be accepted but considered without technicality. Sherar v Cullen 481 F.2d 946 (1973)" There can be no sanction or penalty imposed upon one

because of his exercise of his constitutional rights. "Schware v Board of Examiners united states reports 353 US pages 238, 239. "The practice of law is an occupation of common right" there is a constitutional right to acces the courts" Bounds v smith 430 US 817, 821, 828, 9 S ct 1491,1492-93, 1494,1498, (1977).

□

Cruel Unusual Punishment; Physical abuse, mental abuse, and disregard for my Medical needs, Unreasonable sanctions; 8th Amendment and 14th Amendment U.S. Constitution; 5th Amendment U.S. Constitution: This case, the court, State of Idaho, Ada County, Boise Police, Judge Day, Diana Barroso, et al - has unnecessarily subjected me to Cruel Unusual Punishment, physical abuse, mental abuse, and unnecessary and unreasonable sanctions; I suffer from several mental Disabilities especially due to Traumatic events in my life. This case has become another traumatic event compounding tragedy upon tragedy, and enhancement of my symptoms. This court order has caused me to suffer mentally in turn which has caused complications and increased symptoms and frequency of attacks. I was the first person to hold my Daughter and look into her eyes when she was born, and my eyes were the first eyes that she looked into after she was born. We have had an ongoing lasting strong bond ever since. I have always been a part of her schooling, and have always helped her with her homework. We have began learning Chinese and Italian together. Together we play, learn, and practice T ball, basketball, Taekwondo, Karate, Judo, Chess, Tennis, and soccer. We had a daily ritual of practicing her spelling words. I have not been allowed to visit my Daughter since March, 2010; Visitation is a Constitutionally Protected Right which can be protected even in Federal Court, even if Father is in Prison. Even people in Prison have a constitutionally protected Right to Visitation, but a

Father who is on the Deans List at BSU with letters of recommendation, and is a senior about to Graduate with a Bachelors in Criminal Justice, hasn't been allowed to see his Daughter since March, 2010. The mental trauma has caused me sleep deprivation, eating problems, mental anguish, increased sadness and depression. Regarding repercussive force ;These symptoms have triggered more breathing and pancreas problems and complications. I was discouraged from using my inhaler at court regardless of asthma attacks under penalty of contempt, by the clerks, deputy, and because of Judge Days anger towards me. Also, at the offset of the case Boise Police Falsely Imprisoned me and I was forced to wait in a vehicle without being able to use my inhalers These claims are pursuant Bell V. Wolfish, 441 4-5 520, 535 (1979). Farmer v. Brennan, 511 U.S. 825, 838, 114 s. ct. 1970, 1979 (1994) Hudson v. McMallian, 503 U.S. 1,8,112 S. Ct. 285, 290-91 (1976)Farmer v Brennan, 511 US 825,834,114 S Ct. 1970, 1977 (1994))(ID., 511 US at 837,114 S. Ct. at 1979)(Wong Wing v-US, 163 U-S 228,237-38.(1896))(Edwardsun. Jhonson, 209 F.3d 772,778(5th cin 2000)

□

Disability and Gender Discrimination;Title II ADA/14th Amendement Equal Protection Clause/ 5th and 14th Amendment Custody Rights: Judge Day, Ada County, Legal Aid, the State of Idaho, Fourth Judicial District, all have a long history of Discrimination against males and single fathers in family court, criminal court, and in these types of cases; this is proven by court records, Judge Day's past cases, Legal Aid's past cases, and throughout the entire state of Idaho. Single Fathers and males almost always lose in all Family court or Protection Order cases. Betancourt's Disabilities were disregarded and given no consideration, and Judge Day refused the evidence and Doctor and Medical Records. Nevada Department of Human Resources v. Hibbs, 538 U.S. 721 (2003) 123 S.Ct. 1972

The Family Medical Leave Act of 1993 entitles eligible employees to take up to 12 work weeks of unpaid leave annually for any of several reasons, including the onset of a "serious health condition" in an employee's spouse, child, or parent.

Barnett v. U.S. Air, 228 F.3d 1105 (9th Cir. 2000)

In order to determine an appropriate reasonable accommodation, the employer must initiate an informal, interactive process when he learns that the qualified individual with a disability is in need of accommodation.

Bragdon v. Abbott, 524 U.S. 624 (1998) 118 S.Ct. 2196

A person with asymptomatic human immunodeficiency virus (HIV) infection has an impairment that substantially limits her ability to engage in a major life activity - reproduction.

Head v. Glacier Northwest Inc., 413 F.3d 1053 (9th Cir. 2005)

Sleeping is a major life activity under the ADA.

Albertsons, Inc. v. Kirkingburg, 527 U.S. 555 (1999) 119 S.Ct. 2162

Monocular vision is not invariably a disability, but must be analyzed on an individual basis, taking into account mitigating measures such as the individual's ability to compensate for the impairment by wearing eyeglasses.

- Bragdon v. Abbott (1998)

The Court holds that HIV infection qualifies as a disability under the Americans with Disabilities Act (ADA).

- Murphy v. United Parcel Service, Inc. (1999)

In this case, the Court explains how to determine whether an impairment "substantially limits" a major life activity under the Americans with Disabilities Act (ADA).

- Sutton v. United Airlines, Inc. (1999)

The Court clarifies the definition of "disabled" under the Americans with Disabilities Act (ADA).³³⁹³

In *Taylor v. Phoenixville School District*, __ F.3d __ (3d Cir. 1999), the Third Circuit reversed the lower court's grant of summary judgment in favor of the employer and reinstated a suit brought by a secretary who suffered from bipolar disorder. In reversing the district court, the court of appeals held that the secretary's bipolar disorder was a disabling condition under the ADA because it substantially limited her abilities to think, care for herself, concentrate, and interact with others. The court noted that the secretary had been confined to a hospital because she was psychotic, had become increasingly agitated, and that she suffered paranoid delusions that persons were trying to kill her. The court of appeals also found that the secretary's employer school district had more than enough information to put it on notice that the secretary might be disabled due to her bipolar disorder. In addition, the court found that when the secretary's son asked for "accommodations" from the school district, the district bore the burden of seeking whatever additional information it may have needed pertaining to the secretary's disability and possible accommodations. Accordingly, the court of appeals held that a reasonable jury could conclude that the school district failed to

engage in an interactive process of seeking accommodations for the secretary and, hence, failed to fulfill its ADA obligations.

Judge Day did not allow Betancourt to submit any information regarding his mental Disabilities and psychologist reports which denied me due process and right to a "meaningfull hearing" pursuant Armstrong v. Mango, 380 US 545, 552; 85 S. CT. 1187 (1965) Betancourt is Disabled pursuant Title II ADA and U.S. Code 42 USC 12131(2), 42USC 12102(2), his disabilities and diseases limit several major life activities, especially breathing; plaintiff has medical records going back to 1978 and even the jail has diagnosed him in the past. Plaintiff also had and has PTSD. Once again plaintiffs disability was ignored and disregarded due to the fact that it is not visible to the eye, but is in his lungs, inside his body. Pennsylvania Dept. of corrections v. Yeskey 524 US 201, 211, 118, s.ct. 1952, 1955, (1998(. 42 USC 12112(9).

□

14th Amendment/5th Amendment; Fundamental Fairness and Due Process Rights are violated by the compilation of above rights violations. A state can provide more due process rights to a defendant or citizen than federal constitutional due process, but the cannot provide less protections. All Ex Parte Proceedings are illegal. ex parte petition and order which is illegal and unconstitutional pursuant to Idaho Code 18-4506 and pursuant to Rankin v. Howard, 633 F.2d 844 (1980); Geisenger V. VOSE, 352 F. Supp. 104 (1972) which states that these types of restraining orders, hearings are unconstitutional and illegal.

□

□ Judge Day cut off Betancourt while he was trying to make objections and he was not allowed to finish his objections, especially where there was more than one objection warranted;

He allowed Diana and her witnesses to use improper characterization, and to testify improperly as experts. He allowed them to illegally admit Hearsay evidence but then accused Betancourt of attempting to use Hearsay thus creating an Unfair double standard. Judge Day accused Betancourt of asking the same question more than once but instead should have recognized that the witnesses were avoiding questions and answering vague to avoid the questions; Betancourt requested to treat one of the witnesses as Hostile Judge Day ignored his request without a response, typical of Judge Day.

Exhibits, Evidence, Witnesses ; None of the exhibits offered by Diana Barroso were ever Authenticated and she presented no witnesses of authentication; There is No way that her evidence could have authenticated itself, and was not stipulated to, and Betancourt was given No Disclosure or Discovery. All of her witnesses were related to her with Bias Prejudice and had a motive to lie: also they all benefited financially or some other way from this order. Everything she submitted was more prejudicial and inflammatory, with no probative value. She was allowed to ask leading questions, and to elaborate too much on the answers to the point of irrelevance. The Majority of her evidence was either Hearsay or Irrelevant in subject matter or time. Judge Day illegally disallowed my documents to be submitted as evidence, to be used to refresh witness memory, or to even use my documents for past recollection recorded. He allowed Barroso and her witnesses to be non-responsive to Betancourt's questions and to avoid his questions. Her witnesses and her both gave improper lay testimony. Judge Day ruled all of her documents as hearsay but Betancourt's evidence was not hearsay and any evidence that was even borderline falls under the exceptions under Rules of Evidence 801, 803, and 804 regarding hearsay exceptions, or other exceptions. Betancourt's evidence was not statements made out of court,

offered in court to prove matter asserted , but instead were relevant documents with out contentions of the meaning of the words; (Medical Documentation, Boise State University Documents, E amil records sent by Diana Barroso to Betancourt, letters and mail records of letters from Diana Barroso, time records from BSU showing Betancourts whereabouts during the vague and ambiguous time frame. etc.) Barroso's witnesses were allowed to speculate throughout the hearing and none ofg the evidence in the protection order ewas ever presented. Judge Day refused to allow Betancourt to admit letters, Mail Records, and jail records from Diana Barroso where she states that she is going to make Betancourt's life a living hell, as well as other threats and where she exhibits her true motives behind the false information in her protection order, and behind the false information she gave to the Boise Police department and to the court: these letters prove that this restraining order is nothing but an act of retaliation. Also on more than one document she lies under oath and to police officers including Owyhee and Canyon County Sherriffs officers. These letters are authenticated by mail records, jail records, and Discovery in CR 2006-8064 Canyon County.

☐

☐ The Hearing minutes do not reflect the Audio accurately and should have been transcribed.

☐ Judge Day says that Paternity was not at issue because I attempted to submit my Daughter's Birth Certifacate and paternity stipulation but paternity was related to the reason the police were called; the police were called because Diana and her sister Yuri told my Daughter's School that I was not her Father, which is part of why they called police, but is also why police did not arrest me; Once they found out I was named on the paternity stipulation they gave me

permission to pick up my Daughter and this is on a recorded meeting with the Principal and Boise Police Dept; this is after they saw the Birth Certificate. If I had been allowed to file a subpoena or motion to compel this evidence might have been submitted at the hearing thus showing Diana's Real reason for filing the protection order. Paternity documentation is also relevant because Diana Barroso has lied to the Idaho Dept. Vital Statistics, and to this court, Health and Welfare, and several other organizations regarding Paternity of my Daughter, and this is proven by my Daughter's blood type and my blood type. This does not affect how much I love my Daughter and how close we are. I Love my Daughter very much and we should not have been ripped apart.

☐ Judge Day ignored the fact that I had documents that prove that Diana Barroso transmitted photos of my Daughter via E Mail and allowed known pedophiles access to said photos. He also ignored evidence related to the abuse of my Daughter by her mother and her family; this contradicted his previous ruling because he said evidence related to past violence was admissible, but then refuse to allow me to submit evidence or witnesses of past violence Judge Day disregarded the safety of my Daughter.

☐ Judge Day made objections and statements on behalf of Diana Barroso without her statement or request.

☐ He erred when he stated that the timeliness of the petition, and other issues were appellate issues; He refused to allow my Father to speak and hindered his testimony. This protection order violates my Father's Rights as well because he has been denied visitation since March also. I also had the right to use my Father's letter which he already submitted to the court as to refresh his memory and for past recollection recorded.

Custody of Child should be changed because Visitation has been denied. ENTWISTLE V. ENTWISTLE, 402 NYS 2d 213

Justice delayed is Justice Denied MAGNA CHARTA, Art. 40, June 15, 1215

These constitutional rights violations can be addressed in Habeas Corpus; Habeas Corpus is a Constitutional Right

NGUYEN DA YEN V. KISSENGER, 528 F.2d 1194 (1975)

Everything stated above also constitute several Idaho Constitutional Violations: Idaho constitutional articles: 5-1, 1-22, 1-7, 1-9, 1-17, 1-13, 1-11, 1-9, 1-22, 1-8, and 5-25.

1. One of the most important issues in this case is the fact that there was no Discovery; In the original Proceeding there was no Discovery Process, Judge Day did not respond to the motion for Discovery that I filed. The other party had a responsibility to provide Discovery, and I have a right to Discovery pursuant Brady v. Maryland, 373 U.S. 83 (1963). Judge Sticklen ignored this issue on Appeal and did not even address it even though it was clearly raised more than once. My right to subpoena Rights were violated because the clerks told me I was not allowed to subpoena witnesses or documentation in this case and refused to accept my subpoenas. My right to confront accusers was violated because because there was no notice of exhibits or witnesses and because Judge Day interrupted all of my questions and yelled at me and harassed me through the entire hearing. My equal protection rights, child custody rights, right to confront adverse witnesses, impartial triar of fact were also violated by these proceedings. My

rights to be free from illegal interrogation, double jeopardy, right to counsel during interrogation, right against self incrimination, right to know the accusations, compulsory process, over breadth accusations, right to subpoena, right to compel witnesses were violated. I was denied access to the court, freedom of speech, freedom of religion, right to be heard also. I was also subjected to cruel unusual punishment because I was denied the right to use my inhalers during the original hearing; I was subjected to malicious harassment, and physical and mental abuse, not allowed to use my inhalers at the hearing, fundamental due process and fairness, demoralization by Judge Day, and retaliation issues were ignored by Judge sticklen, but I raised all of the above issues in both proceedings. Judge Day in the original proceeding refused to allow me to submit Allibi evidence and documentation. He refused to allow me submit evidence or ask questions on the same issues he allowed the other party to. He ruled that history of violence was admissible, but when I submitted evidence and testimony, or asked questions on those same issues he ruled against it exhibiting a double standard and lack of objectivity. Several subpoenas, motions, and documents I filed were ignored and disregarded by Judge Day and this is supported by record. Judge Stricklen misrepresents the issues raised by Aniceto Betancourt on Appeal on page 11 of her memorandum decision and order. Both Judge Day and Judge Sticklen Discriminated against Aniceto Betancourt because of his Disabilities and Gender. Also, in both proceedings I filed motions for transcription of record and never received any response from the court.

2. I was given no notice of witnesses, and no notice of exhibits prior to the hearing and the Discovery process was non-existent. I had several documents that prove that I had an Allibi and that Diana Barroso and her witnesses lied, but Judge Day refused them.

3. This entire action began as an act of retaliation by Diana Barroso because of a lawsuit I filed against Owyhee County, and other clients of Diana Barroso and Filliceti Law Office

pursuant Hicks, et al. v. Baines, et al., Docket No. 06-3782-CV (2d Cir. Feb. 2, 2010), the U.S. Court of Appeals for the Second Circuit held that retaliation claims brought by three New York State employees were sufficient to survive summary judgment. Significantly, the Second Circuit applied the standard set forth by the U.S. Supreme Court in its 2006 decision, Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53 (2006) Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir.1985). A retaliation claim may proceed without any showing of harm other than a chilling effect of First Amendment rights. Gomez v. Vernon,255 F.3d 1118, 1127 (9th Cir. 2001) (citing Hines v. Gomez, 108 F.3d 265 (9th Cir. 1997) G.

4. Judge Day, erred by not allowing me to enter into evidence, documents of checks falsely cashed by Diana Barroso,false statements she made to law enforcement claiming that we were married, and where she used my last name to directly refute her character, conduct, credibility, prior inconsistent statements as a witness, and motives for lying. Also at the hearing she made statements regarding my criminal history that she contradicted under oath in another proceeding. Judge Day ignored this. Judge day ignored. I also had letters from Diana Barroso in her handwriting, contradicting everything that she said in the protective order hearing. I also had documentation to prove that I was nowhere near the locations Diana Barroso accused me of being. Also to the same I have Medical documentation proving that I was hospitalized and under very strong medication which prove I was at the hospital and not at the places described, or at the times stated by Diana. I have E mail records that disprove all of her statements in the protective order.

The so called "photographs" entered as evidence are phony, photo shopped, and fakes. I was never given copies, and they were taken away from me in court by the deputy before I could even look at them thoroughly.

was denied Access to the court in violation of the first Amendment by

5. Judge Sticklen stated that Pro-se parties are to be held to the standard of an attorney and Judge Day over scrutinized Betancourt at the original hearing; Judge Day and Judge Sticklen, and The court is denied me access to the court and scrutinized my documents based on technicalities, and argument at hearings in violation of the first Amendment of the US constitution ; see Elmore v. McCammon (1986) 640 F. Supp. 905
"... the right to file a lawsuit pro se is one of the most important rights under the constitution and laws."

Jenkins v. McKeithen, 395 U.S. 411, 421 (1959); Picking v. Pennsylvania R. Co., 151 Fed 2nd 240; Pucket v. Cox, 456 2nd 233

Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers.

Maty v. Grasselli Chemical Co., 303 U.S. 197 (1938)

"Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment."

Puckett v. Cox, 456 F. 2d 233 (1972) (6th Cir. USCA)

It was held that a pro se complaint requires a less stringent reading than one drafted by a lawyer per Justice Black in Conley v. Gibson (see case listed above, Pro Se Rights Section).

Picking v. Pennsylvania Railway, 151 F.2d. 240, Third Circuit Court of Appeals

The plaintiff's civil rights pleading was 150 pages and described by a federal judge as "inept".

Nevertheless, it was held "Where a plaintiff pleads pro se in a suit for protection of civil rights, the Court should endeavor to construe Plaintiff's Pleadings without regard to technicalities."

Puckett v. Cox, 456 F. 2d 233 (1972) (6th Cir. USCA)

It was held that a pro se complaint requires a less stringent reading than one drafted by a lawyer per Justice Black in Conley v. Gibson (see case listed above, Pro Se Rights Section).

Roadway Express v. Pipe, 447 U.S. 752 at 757 (1982);

Sherar v. Cullen, 481 F. 2d 946 (1973)

"There can be no sanction or penalty imposed upon one because of his exercise of Constitutional Rights."

Schware v. Board of Examiners, United State Reports 353 U.S. pages 238, 239.

"The practice of law cannot be licensed by any state/State."

Sims v. Aherns, 271 SW 720 (1925)

"The practice of law is an occupation of common right."

Haines v. Kerner, 404 U.S. 520 (1971) states that pro se pleadings should be held to "less stringent standards" than those drafted by attorneys.

Conclusion

Deuteronomy 1:29-31

Then I said to you, "Do not be terrified; do not be afraid of them. The LORD your God, who is going before you, will fight for you, as he did for you in Egypt, before your very eyes, and in the desert. There you saw how the LORD your God carried you, as a father carries his son, all the way you went until you reached this place." (NIV)

Psalm 103:13

As a father has compassion on his children, so the LORD has compassion on those who fear him: (NIV)

Malachi 4:6

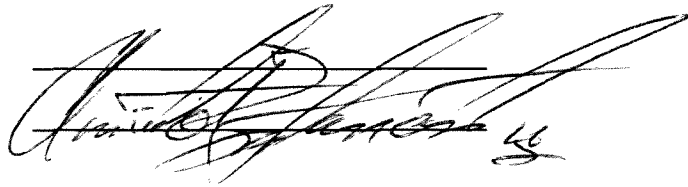
He will turn the hearts of the fathers to their children, and the hearts of the children to their fathers; or else I will come and strike the land with a curse. (NIV)

Robert B. B. 10/19/11

Certifacate of Service

Docket# 38617

I hereby state that I gave and delivered a true and correct copy to Roderick Gere, attorney for the other party in this case located at 310 N. 5th Street : **Boise**, ID 83702 : Phone Number: (208) 345-0106 :

A handwritten signature in black ink, appearing to read "David J. Hester". The signature is written in a cursive style with a horizontal line drawn through the middle of the name.

8/9/11